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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Implementation of the Cable
Television Consumer
Protection and Competition
Act of 1992
Cable Home Wiring

MM Docket No. 92-260

To: The Commission

COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

The Utilities Telecommunications Council (UTC) hereby submits its comments in response to the Notice of Proposed Rule Making, FCC 92-500, released November 6, 1992, in the above-captioned matter.

UTC is the national representative on communications matters for the nation's electric, gas and water utilities. Approximately 2,000 utilities are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers each, to small rural electric cooperatives and water districts serving only a few thousand customers each. All utilities rely on communications to support their ability to render public service. In addition, many utilities are investigating use of broadband communications systems as means by which utilities could conduct automatic meter reading, demand-

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side management, peak load control, and other advanced energy conservation techniques.

The Commission has initiated this proceeding in compliance with the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385 (Cable Act), in order to "prescribe rules concerning the disposition, after a subscriber to a cable television system terminates service, of any cable installed by the cable operator within the premises of such subscriber." The Commission has requested comment on how to best accommodate the interests of cable subscribers and cable television system operators, whether rules must be tailored to the setting involved (e.g., single-family home vs. multiple unit dwellings), and whether rules should differentiate between existing and future cable home wiring installations.

UTC supports the development of rules on cable television inside wiring that will promote the underlying premise of the Cable Act; namely, that consumers should have alternatives for broadband communications services. If cable television system operators are permitted to remove cable television inside wiring, or are permitted to charge unreasonably high prices for the purchase of cable home wiring, they will have substantial means to deter

subscribers from changing services. Therefore, the rules on cable television inside wiring should restrict the incumbent cable television system operator from using its ownership of cable inside wiring as leverage in restricting broadband competition.

The Commission was faced with a similar issue when it sought to open the telephone inside wiring market to competition. In order to ensure that consumers would have flexibility to secure installation or maintenance of inside wiring from multiple providers, the Commission originally ordered that all telephone companies should relinquish claims of ownership to "expensed" inside wiring by January 1, 1987, and of "capitalized" inside wiring by the end of the amortization period for the investment in that wiring.^{1/}

However, on reconsideration, the Commission acknowledged that this could raise an issue of unconstitutional "taking" of property without just compensation. The Commission therefore decided it could accomplish its deregulatory purposes without requiring

^{1/} Second Report and Order in CC Docket No. 79-105, 51 Fed. Reg. 8498 (March 12, 1986).

telephone companies to give up ownership of any inside wiring they might have installed:

35. Customers' ability to obtain inside wiring installation and maintenance from sources of their own choosing could be inhibited if a telephone company were to use a claim of ownership as a basis for restricting the removal, replacement, rearrangement or maintenance of inside wiring. Therefore, we will preclude telephone companies from imposing such restrictions with respect to inside wiring that has ever been installed or maintained under tariff. Ratepayer rights would also be abridged if telephone companies were to receive additional compensation for such wiring after it had been expensed or fully amortized. Therefore, we will preclude the telephone companies from requiring that such wiring be purchased and from imposing a charge for the use of such wiring. Telephone companies may, of course, collect wiring maintenance fees on an untariffed basis from anyone who chooses to use that service, provided the companies use the accounts provided for unregulated activities. . . .^{2/}

The Commission's policies on the use of telephone inside wiring provide an excellent model for the development of cable television inside wiring policies.^{3/}

^{2/} Memorandum Opinion and Order on reconsideration in CC Docket No. 79-105, 1 FCC Rcd 1190, 1195 (1986), remanded on other grounds sub. nom. National Association of Regulatory Utility Commissioners v. FCC, 880 F.2d 422 (D.C. Cir. 1989).

^{3/} In fact, with the development of hybrid cable television/telephone systems or video dial tone systems, some inside wiring used for multichannel video delivery might be subject to the FCC's existing policies on telephone inside wiring. With the potential, if not likely, convergence of these two technologies, the Commission should make its policies on cable television inside wiring and telephone inside wiring as consistent as (continued...)

For example, the Commission has requested comment on whether rules could be developed that "will not discourage cable investment in continuing to extend service to unwired homes." Under the telephone inside wiring model, cable television operators would be free to install or maintain inside wiring on any basis they choose. If a cable operator decides to offer "free" installation, it may do so, or it may elect to charge customers for its expense of installing inside wiring.

Similarly, the telephone inside wiring model renders moot any issues concerning "legal title" to the inside wiring under state property or taxation laws. It is irrelevant whether title is considered to be vested in the cable television company or the homeowner, or whether the wiring is considered a "fixture" or a part of the cable television plant. The telephone model also negates the need to consider "valuation" of inside wiring for purchase

^{3/}(...continued)
possible.

UTC recognizes that the basis for the FCC's policies on telephone inside wiring was to create a competitive market for inside wiring installation and maintenance, and not a competitive market for telephone service. However, in both the telephone and cable television situations, the FCC is faced with promoting competition in a market subject to its regulation where ownership and/or control of an installed facility could be used by the incumbent to thwart competitive entry to the market.

by the homeowner, or whether the homeowner has in fact paid for such wiring at the time of installation. The only issue that must be addressed -- and the primary issue entrusted to the Commission by Section 16(d) of the Cable Act -- is whether the homeowner has the right to use or dispose of cable television inside wiring after the homeowner voluntarily terminates service.

With respect to responsibility for preventing cable television signal leakage, it is also instructive to consider the Commission's existing policies on telephone inside wiring. Although telephone inside wiring or telephone customer premises equipment (CPE) generally does not have the potential to cause harmful interference to other radio services, there is the potential for improperly installed or maintained telephone inside wiring or CPE to cause harm to the public telephone network. Recognizing this potential, the Commission has adopted clear policies which permit a telephone company to terminate service if the carrier reasonably believes that harm to the network, as defined by applicable standards, is imminent.^{4/}

^{4/} Report and Order and Further Notice of Proposed Rule Making in CC Docket No. 88-57, 5 FCC Rcd 4686, 4696-97 (1990).

In any event, cable television subscribers are already subject to discontinuance of service if they permit any cable system terminal equipment (e.g., subscriber terminal, input selector switch, or any other accessories) to cause excessive signal leakage.^{5/} While the cable television operator is ultimately responsible for correcting excessive signal leakage, it may fulfill its responsibility by terminating service to any subscriber whose in-building equipment radiates a signal outside the building or in such a manner as to cause the cable system to exceed the Part 76 signal leakage standards. Adoption of the telephone model for cable television inside wiring would not require alteration of this policy.

In conclusion, UTC urges the Commission to adopt rules that will foster a competitive environment for broadband communications systems. A rule such as the following, modeled after the policies adopted for telephone inside wiring, would achieve this objective with the least disruption to cable television operators, cable subscribers, or the Commission:

76.XXX A cable operator may not use a claim of ownership as a basis for restricting a subscriber's right to remove, replace, rearrange,

^{5/} 47 C.F.R. §76.617.

or maintain any cable home wiring that may have been installed by the cable operator. Further, a cable operator may not require that cable home wiring be purchased from it or impose any charge for the use of such wiring upon voluntary termination of service by the subscriber; provided, however, that nothing in this section shall affect the cable operator's rights and responsibilities under Section 76.617 to prevent excessive signal leakage caused by improperly installed or maintained cable home wiring.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully urges the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS
COUNCIL

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